IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 458 of 2003

with

CIVIL APPLICATION NO.9120 OF 2003

with

CIVIL APPLICATION NO.1211 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUDHIRBHAI SHAH MANAGING DIRECTOR

Versus

HAKIMSING CHOTESING RAJPUT

Appearance:

1. Appeal from Order No. 458 of 2003

MR PRAFUL N THAKKAR for appellant No. 1

DS AFF.NOT FILED (N) for Respondent No. 1

MR JK PARMAR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 09/03/2004

ORAL JUDGEMENT

1. Appeal admitted. Mr. Chetan Pandya, learned advocate appearing for the respondent waives service of notice of admission. At the joint request of the parties, the appeal is taken up for final hearing today.

2. The present appeal is filed by the appellant against the order passed by the learned II Auxiliary Chamber Judge, City Civil Court, Court No.18, Ahmedabad below an application Exh.14 in Civil Suit No.3301 of 2003, dated 11-12-2003, whereby the learned Judge has rejected the application moved by the present appellant seeking time for filing reply and granting interim relief in terms of para 7 (A) of the Notice of Motion Application purely on temporary basis till filing of the reply or written statement to the suit by the present appellant-original defendant.

3. This Court has passed an order on 12-12-2003 whereby the Court has issued notice to the respondent-original plaintiff making it returnable on 22nd December, 2003 and meanwhile interim relief in terms of para 5 (B) of Civil Application No.9120 of 2003 was granted. The matter was thereafter adjourned from time to time. The respondent-original plaintiff thereafter moved Civil Application No.1211 of 2004 for vacating ad-interim relief granted by this Court in Civil Application No.9120 of 2003, staying execution and operation of ad-interim order, passed by the learned II Auxiliary Chamber Judge, City Civil Court, Court No.18, Ahmedabad, below an application Exh.14 in Civil Suit No.3301 of 2003, dated 11-12-2003.

4. After having heard learned advocates appearing for the respective parties and after having gone through the order passed by the City Civil Judge, Ahmedabad granting ad interim relief and after considering the pleadings of the parties in the main matter i.e. Appeal from Order, the affidavit in reply filed by the present appellant-original defendant to Civil Application No.1211 of 2004, this Court is of the view that the present appeal is filed only against an ad-interim order passed by the learned City Civil Judge, Ahmedabad and normally the Court does not interfere with any ad-interim order passed by the trial Court. However, looking to the facts and circumstances of the case, this Court has thought it fit in issuing notice and staying ad-interim order passed

by the trial Court vide order dated 12-12-2003.

5. It transpired during the course of hearing of the learned advocates appearing for the respective parties that during the pendency of the present Appeal from Order, the respondent-original plaintiff has moved an application in the suit to join Ahmedabad Electricity Company as a party-respondent and the said application has been granted. It also transpired that the copies of amended suit as well as Notice of Motion application were already served on the appellant-original defendant by UPC. However, Mr. P.N.Thakkar, learned advocate appearing for the appellant-original defendant submits that the Ahmedabad Electricity Company has not been served with the copies of amended suit as well as Notice of Motion Application. Be that as it may, without entering into the controversy, the Court hereby directs the appellant-original defendant to ascertain as to whether the service of the amended suit as well as Notice of Motion application has been effected on the Ahmedabad Electricity Company, of which the present appellant-original defendant is the Managing Director and if the service has been effected or even in absence of service, by waiving service of notice, the Ahmedabad Electricity Company will file its written statement/affidavit in reply to Regular Civil Suit No.3301 of 2003 within one week from today, before the trial Court and on filing the said reply before the trial Court, the present respondent-original plaintiff will file the affidavit-in-rejoinder, if he so desire, within one week thereafter. The learned trial Judge is hereby directed that after completion of pleadings, he may hear the Notice of Motion application and take the decision in accordance with the law. In this view of the matter and till the Notice of Motion application is decided, the original order passed by the trial Court on 11-12-2003, which is stayed by this Court vide order dated 12-12-2003, is of no survival value now. It is however, open for the present respondent, if he wants to enter into the premises of any branch office/zonal office or head office of the Ahmedabad Electricity Company for any work to move an application before the concerned authority of Ahmedabad Electricity Company, after obtaining prior permission, he may enter into that particular office. However, these observations will not confer any right on present respondent-original plaintiff and the decision will be taken by the Ahmedabad Electricity Company on the basis of merits of such application.

6. With these directions and observations, this

Appeal from Order is accordingly disposed of. The trial Court is directed to decide the Notice of Motion application as expeditiously as possible and both the parties shall cooperate in early disposal of the same.

7. As the Appeal from Order is disposed of, Civil Application No.1211 of 2004 and Civil Application No.9120 of 2003 do not survive and disposed of accordingly.

(K.A.Puj, J.)
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